

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: December 13, 2007

Approved

Date

12/15/07

COUNCIL DISTRICT: # 8

SNI AREA: K.O.N.A, East
Valley/680 and West
Evergreen

SUPPLEMENTAL MEMO

SUBJECT:

GP07-T-06. AMEND THE SAN JOSÉ 2020 GENERAL PLAN TEXT TO MAKE ADDITIONS TO COMMERCIAL LAND USE AND ECONOMIC DEVELOPMENT GOALS AND POLICIES TO STRENGTHEN THE CITY'S COMMITMENT TO ENCOURAGE HIGH QUALITY RETAIL IN EVERGREEN, PRESERVE EXISTING COMMERCIAL CENTERS AND LIMIT GROCERY STORES IN SOUTHEAST EVERGREEN TO NO MORE THAN 20,000 SQUARE FEET, AND SUPPORT JOB GENERATION IN ORDER TO BALANCE THE LAND USE AND COMMUTE PATTERNS IN EVERGREEN.

REASON FOR SUPPLEMENTAL

This supplemental memo is to clarify the public purpose of the section of the proposed text amendment to the *San José 2020 General Plan* that is intended to limit grocery stores in Southeast Evergreen to no more than 20,000 square feet in size. This supplemental memo also transmits a letter from Joan Gallo, dated December 10, 2007 and to clarify language recommended by the Planning Commission to address the potential non-conforming status of existing grocery stores.

RECOMMENDATION

Adopt the staff initiated General Plan text amendment to make additions to commercial land use and economic development goals and policies to strengthen the city's commitment to encourage high quality constructed retail in Evergreen, preserve existing commercial centers and limit grocery stores to a maximum floor area of 20,000 in Southeast Evergreen, and support job generation in order to balance the land use and commute patterns in evergreen.

OUTCOME

Should the City Council deny the proposed text amendment, the proposed text would not be added to the City's General Plan.

BACKGROUND

On June 26, 2007, the City Council directed staff to bring forward policies to encourage development of high quality constructed commercial/retail opportunities in Evergreen and discourage grocery stores over 20,000 square feet to locate in Southeast Evergreen. The City Council directed staff to "return to the council with a policy that addresses future market development over 20,000 square feet in Southeast Evergreen that should take into account the use of market studies, potential growth, and the possibility of loss of existing supermarket square footage" This staff initiated proposed text amendment to the City's General Plan is in response to the direction by City Council to support commercial development in Evergreen, specifically related to the development of grocery stores over 20,000 square feet.

Regarding the proposed text directed at grocery stores in Southeast Evergreen, Planning staff initially recommended that the following text be added to the General Plan, amending Chapter IV. Goals and Policies, Commercial Land Use, page 62 to state "The City discourages additional grocery stores over 20,000 square feet in Southeast Evergreen (in the area bounded by Aborn Road to the north, San Felipe Road to the west and the City's Urban Service Boundary to the south)." Staff received a letter prior to the Planning Commission hearing from Joan Gallo dated November 9, 2007, representing the Canyon Creek Plaza shopping center and Shappell, the owner of the Evergreen Village Center that requested that stronger language be included in the text amendment to hinder development of large grocery stores in Southeast Evergreen, rather than the word "discourage," which was proposed at the time. At the Planning Commission November 14, 2007 hearing, staff responded to Joan Gallo's letter by providing alternative language. The Planning Commission voted 7-0-0 to recommend approval of the subject General Plan text amendment request with the alternative text as proposed by staff. The text amendment recommended by the Planning Commission is as follows:

"Grocery stores are limited to a maximum floor area of 20,000 square feet in Southeast Evergreen (in the area bounded by Aborn Road to the north, San Felipe Road to the west and the City's Urban Service Boundary to the south)."

Staff received a letter from Joan Gallo dated December 10, 2007, which requests a modification to the boundaries of Southeast Evergreen so not to include the Evergreen Village Center within the boundary area. Another alternative that Ms. Gallo indicates as acceptable would be the inclusion of language in the text amendment that the policy is not intended to preclude the expansion or relocation of a grocery store at the Evergreen Village Center.

ANALYSIS

In addition to the reasons stated in the original staff report for the purpose for the proposed text amendment to the City's General Plan, and because the public purpose for the supporting the amendment is different than that expressed by private commentators, staff would like to further clarify the public purposes for including a policy in the General Plan which would limit grocery stores in Southeast Evergreen to no more than 20,000 square feet.

The proposed text amendment is intended to support the Evergreen Village Center and Canyon Creek Shopping Center. The existing grocery store site at Evergreen Village is a vacant 41,000 square-foot store front. The vitality of this grocery store site is important to the success of the Evergreen Village center, and that in order to avoid further vacancies and the appearance of blight in this shopping center and other existing centers in the area, the City is adopting restrictions on additional similar uses to retain the viability of the existing commercial uses in the area.

This supplemental memo also transmits a letter from Joan Gallo dated December 10, 2007. Staff notes that both the November 9 and December 10, 2007 correspondence from Shappell's legal counsel state that there is precedent for this type of action in the General Plan with regard to "Mom & Pop" retail shops in the Communications Hill Planned Community. However, in Communications Hill, these size limits on retail apply throughout the planning area. In the situation in South Evergreen, the purpose of the size limitation is somewhat different. Among other reasons specified previously, the proposal will also avoid the appearance of blight with large vacancies and to encourage the full use of already existing commercial structures in the area.

Staff has reviewed the alternatives presented by Ms. Gallo's letter dated December 10, 2007. Staff is not supportive of altering the determined boundaries of Southeast Evergreen, nor does staff recommend the inclusion of the word "additional" in the beginning of the text amendment language. Rather, staff in consultation with the City Attorney's office recommends the clarification of the language recommended by the Planning Commission to address the potential non-conforming status of existing grocery stores. The proposed new text amendment language is as follows:

Grocery stores are limited to a maximum floor area of 20,000 square feet in Southeast Evergreen (in the area bounded by Aborn Road to the north, San Felipe Road to the west and the City's Urban Service Boundary to the south). Excepted from this policy are grocery stores existing and permitted prior to January 1, 2007. Expansion of existing grocery stores may be allowed upon the same site in accordance with other applicable City laws.

This text amendment to the *San Jose 2020 General Plan* would accomplish the purpose of allowing the existing grocery stores to continue and be able to expand in accordance with other applicable City laws.

EVALUATION AND FOLLOW-UP

Not applicable.

POLICY ALTERNATIVES

Should the City Council deny the proposed text amendment, the proposed text would not be added to the City's General Plan.

PUBLIC OUTREACH/INTEREST



Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)

December 13, 2007

Subject: GP07-T-06 General Plan text amendment for commercial uses in Evergreen

Page 4

- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, a notice of public hearings for the proposed General Plan text amendment was published in the San José Post-Record and posted on the Planning Division's webpage. This staff report will be posted on the City's website and e-mailed to stakeholders and community members involved in the update to the Evergreen-East Hills Development Policy. The proposed General Plan text amendment was also presented to the Developers Roundtable.

COORDINATION

This project was coordinated with the City Attorney.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies and City Council approved design guidelines as further discussed in attached staff report.

COST SUMMARY/IMPLICATIONS

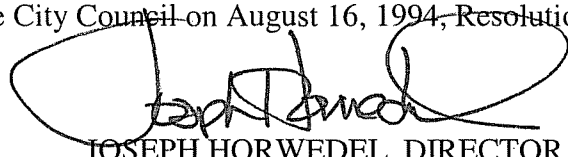
Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

The proposed text amendment is covered by Reuse of the San Jose 2020 General Plan Final Environmental Impact Report, certified by the City Council on August 16, 1994, Resolution No. 65459.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Reena Mathew at 408-535-7844.

Attachments:

Correspondence from Joan Gallo dated December 10, 2007 & November 9, 2007

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December 10, 2007

JOAN R. GALLO
Of Counsel
jgallo@hopkinscarley.com
408-286-9800

Agenda 12/18/07
Item # 10.6

Mayor and City Councilmembers
City of San Jose
200 E. Santa Clara Street
San Jose, CA. 95113

RECEIVED

DEC 10 2007

Re: GP- 07-T-06

CITY OF SAN JOSE
DEVELOPMENT SERVICES

Dear Honorable Mayor Reed and Councilmembers:

On behalf of Canyon Creek Plaza, LP, owner of Canyon Creek Plaza and Shapell Industries of Northern California, owner of the Evergreen Village Center, I am requesting that the General Plan be amended to make a new grocery store in Southeast Evergreen of more than 20,000 square feet inconsistent with the General Plan without limiting the ability of the grocery store in the Village Center to relocate within the center or expand.

The language adopted by the Planning Commission "Grocery stores are limited to a maximum floor area of 20,000 square feet in Southeast Evergreen (in the area bounded by Aborn Road to the north, San Felipe Road to the west and the City's Urban Service Boundary to the south)" inadvertently would make the grocery store in the Village Center non-conforming under the General Plan and would unintentionally preclude it from adding any space or relocating within the center.

This problem can best be solved by merely adjusting the boundary of the area subject to the policy from Aborn Road to Fowler Road. See the attached map. This would more closely achieve the intent of the Planning Commission and the neighborhood. While the Council cannot expand an area subject to a General Plan amendment without renoticing, it is not at all unusual to **reduce the area** subject to a General Plan amendment. This is the clearest and cleanest way to address our concerns.

Therefore, we urge adoption of the following language:

Grocery stores in Southeast Evergreen in the area bounded by **Fowler Road to the north**, San Felipe Road to the west and the City's Urban Service Boundary to the south shall be limited to no more than 20,000 square feet.

The policy to be adopted should achieve two goals.

1. Making an additional full service grocery store inconsistent with the General Plan.

If the City is truly interested in preserving the existing grocery store sites in Canyon Creek Plaza and the Village Center, it needs to create a level of certainty. Any possibility of any additional large grocery stores locating on the College area will continue to undermine the success of these neighborhood-serving commercial centers. Therefore, we ask you to recommend that the Council adopt the General Plan policy amendment which "**limits**", not merely "discourages," any additional grocery store of over 20,000 square feet in Southeast Evergreen.

There is precedence for "limiting" this language. For example: in the Communications Hill Planned Community, "Mom & Pop" retail shops are permitted throughout the multi-family neighborhoods but they are specifically limited to 1500 square feet.

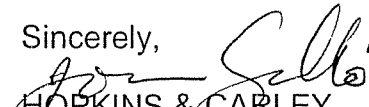
2. Not precluding the possible extension or relocation of the Village Center grocery.

The clear intent of the Evergreen Visioning Task Force, the Planning Commission and the residents who have overwhelmingly opposed a full service grocery store on the College site, is to avoid any **additional** full service grocery stores. No one has at any time, suggested that there is any conceivable benefit to the City from limiting the optimum development of a grocery store in the Village Center. Therefore, we could also support a policy which reads "**Additional** grocery stores are limited to a maximum floor area of 20,000 square feet in Southeast Evergreen (in the area bounded by Aborn Road to the north, San Felipe Road to the west and the City's Urban Service Boundary to the south). This policy is not intended to preclude the expansion or relocation of a grocery store at the Evergreen Village Center."

While we believe the revised map is the much better alternative, adopting either of these versions which will make any additional full service grocery store inconsistent with the General Plan, without limiting the ability of Village Center to attract and keep a grocery store, will be a very significant step in protecting the existing centers.

Thank you for your consideration.

Sincerely,

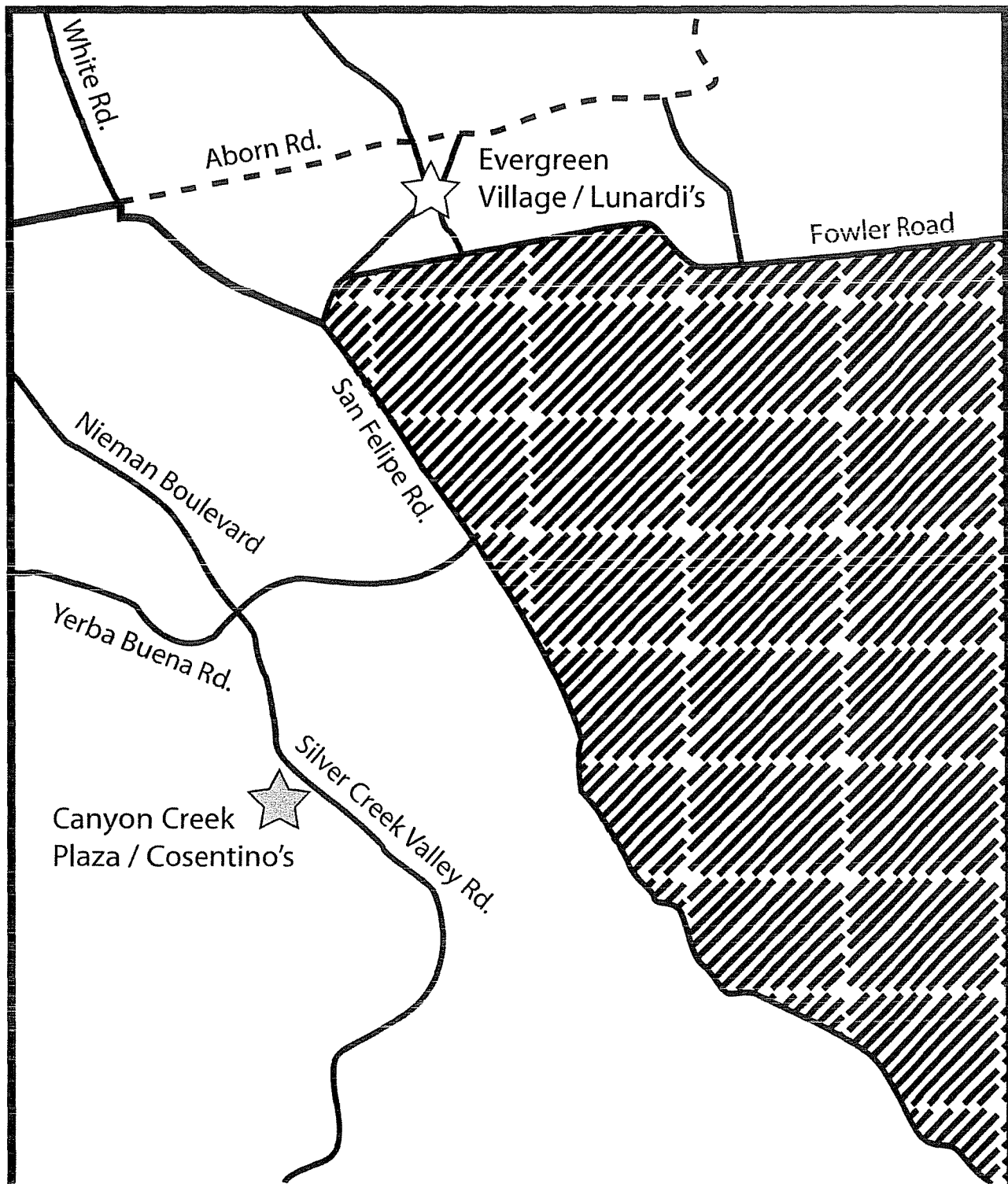

HOPKINS & CARLEY
A Law Corporation
Joan R. Gallo

JRG/bm

Enclosure

cc: Laurel Prevetti
Reena Mathew
Rick Doyle
Ed Abelite
Kelly Erardi

Attachment



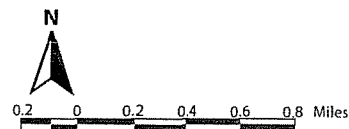
GP TEXT AMENDMENT GP07-T-06



Lunardi's at Evergreen Village



Cosentino's at Canyon Creek Plaza



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November 9, 2007

JOAN R. GALLO
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Agenda – November 14, 2007
GP06-03-02
Item #7a

San Jose City Planning Commission
200 W. Santa Clara Street, 3rd Fl.
San Jose, CA. 95113

Re: Evergreen Community College District Site/Supermarket

Dear Chairperson Ash Kalra and Commission Members:

On behalf of Canyon Creek Plaza, LP, owner of Canyon Creek Plaza and Shapell Industries of Northern California, owner of the Evergreen Village Center, I am requesting, that the amendment to the General Plan with regard to the grocery store in Southeast Evergreen, as proposed by staff, be slightly amended to read as follows:

No additional grocery store over 20,000 square feet **is permitted** in Southeast Evergreen (in the area bounded by Aborn Road to the north, San Felipe Road to the west and the City's Urban Service Boundary to the south).

The term "discourage," as proposed by Staff gives little assurance that no supermarket will be built. Under Staff's proposed language, approval of a grocery store would not be "inconsistent with the General Plan."

The idea of a supermarket in Southeast Evergreen has not been "discouraged" by repeated rejection. Indeed, in addition to the recent Evergreen College proposal, there were defeated or withdrawn proposals in 1994, (GP94-8-4), again in 1995 (GP95-8-2), when the Evergreen Community College first made its retail proposal, and another in 1996, in Evergreen Community College's application (GP96-8-1) which was revised to remove the supermarket from the proposal in a letter from Michael Hill, then Vice Chancellor of the San Jose/ Evergreen Community College District dated October 23, 1996 by revising its General Plan request stating "Very importantly, by excluding a full service grocery operation, the

revised amendment is intended to complement and not adversely impact the commercial Village Center in the Evergreen planned residential community."

It is not unprecedented to have such a prohibition in the General Plan. A quick review of the policies in the General Plan for Special Strategy Areas identified the following:

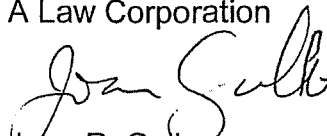
- In the Alviso Planned Community, the General Commercial designation is limited to only small scale retail and office uses. Large scale, high volume, single entity commercial uses are not suitable under the Industrial Park with Mixed Industrial Overlay designation in Alviso.
- In the Mid-Town Planned Community, commercial uses are limited to neighborhood-serving retail uses (e.g., banks, grocery stores, drug stores, bakeries, etc.). Similar limitations to neighborhood serving retail are stated in the North San Jose Area Development Policy.
- In the Communications Hill Planned Community, "Mom & Pop" retail shops are permitted throughout the multi-family neighborhoods but they are specifically limited to 1500 square feet.

If the City is truly interested in preserving the existing grocery store sites in Southeast Evergreen it needs to create a level of certainty. Any possibility of any additional large grocery stores locating in Southeast Evergreen will continue to undermine the success of these neighborhood-serving commercial centers. Therefore, we ask you to recommend that the Council adopt the General Plan policy amendment prohibiting a grocery store of over 20,000 square feet in Southeast Evergreen.

Thank you for your consideration.

Sincerely,

HOPKINS & CARLEY
A Law Corporation



Joan R. Gallo

JRG/bm

cc: Laurel Prevetti
Ed Abelite
Kelly Erardi